Case referred to:—

(1) *Lee Mion v. P. P. of Johore,* 3 M.L.J. p. 124.

APPEAL.

C. H. da Silva for the appellant.

C. H. Koh (D.P.P.) for the Crown.

The facts and arguments sufficiently appear from the judgment.

Terrell, Ag. C.J.—In a judgment which I delivered in a recent Magistrate's Appeal No. 75 of 1940 (*Fuan Ah Pock vs. Rex*) I ruled that the principle of requiring corroboration in the case of accomplices was equally applicable where the conviction depends on the unsworn evidence of a child, and followed the ruling of the Johore Court of Appeal in the case of *Lee Mion vs. the P. P. of Johore*[1]. It follows from this that just as by rule of law one accomplice cannot corroborate another, so one witness of tender years cannot corroborate another witness of tender years.

It was, of course, open to the Magistrate, while fully cognisant of the danger of accepting uncorroborated evidence, nevertheless to do so. In the present case, however, the learned Magistrate, though warned by the argument of counsel that corroboration was necessary, states in his grounds of judgment that one child witness corroborated the other. This negatives an inference that might otherwise have been drawn that he accepted the evidence of either witness without corroboration.

The learned Magistrate, therefore, clearly misdirected himself. The appeal must, therefore, be allowed, the conviction quashed and the sentences set aside.

Appeal allowed.

[ORIGINAL CIVIL JURISDICTION]
BARRETT-LENNARD, J.
October 4, 1924.

K.M. NATHERSAHIB & ANOTHER
v.
MEYER BROTHERS.

[SINGAPORE SUIT No. 908 of 1923]

Act both crime and tort—Criminal prosecution before civil action.

When an act is both a crime and a civil wrong, prosecution for the criminal offence is generally a condition precedent to a civil action in tort at any rate in the case of a non-compoundable offence.

TRIAL OF ACTION.

H. B. Layton and C. H. Smith for plaintiffs.

R. L. L. Braddell and John Laycock for defendants.

In this case the plaintiffs claimed (a) a declaration that 34 promissory notes dated on or about the 12th of July 1923 and made by the two plaintiffs in favour of the defendants were founded on an illegal consideration and were therefore not binding upon the plaintiffs; (b) an order for the delivery up of the notes; and (c) an injunction restraining the defendants from negotiating such notes. The defendants counter-claimed the sum of $148,912.99 being the balance due to the defendants on the plaintiffs' account with them.

There had been considerable dealings between the plaintiffs and the defendants as a result of which the plaintiffs were liable to the defendant in a very large sum of money. The defendants however considered that the matter was beyond a mere civil liability and that the first plaintiff had committed a criminal offence and at the instance of the defendants the first plaintiff was on the 8th June 1923 arrested and charged with the offence of cheating, an offence which is not compoundable. The plaintiffs alleged that the defendants had agreed to compound the prosecution in consideration of the plaintiffs executing 35 promissory notes for the amount of the plaintiffs' liability to the defendants. In fact the plaintiffs did execute such promissory notes and subsequently the prosecution of the first plaintiff was withdrawn and he was discharged. There was considerable difference between the evidence for the plaintiffs and for the defendants on the question of the ground of the withdrawal of the prosecution. In any case the prosecution was withdrawn with the assent of the Deputy Public Prosecutor. The judgment is only of interest on the question that if a wrongful act is both a crime and a tort the crime should be investigated before the Court deals with the question of civil liability in tort. On that subject the judgment of the learned Judge proceeds as follows:—

Barrett-Lennard, J.—Judgment will be entered for the defendants in the sum of $148,912.99 and the costs of this counter-claim. I deplore that it has fallen to me to hear these proceedings antecedently to the prosecution of the plaintiff. It is a wise rule of public policy that a jury shall pass a verdict at the Assizes before a Judge sitting alone tries the issue of criminality. It may be that, if not confronted with the authority signed by the Deputy Public Prosecutor to withdraw from the prosecution of the plaintiff, I should have insisted that his guilt or innocence be investigated by that tribunal in which Englishmen have confidence when issues of criminality are raised. But justice would not, in the circumstances, have been advanced had I adopted that course.

Judgment for defendants.

END OF STRAITS SETTLEMENTS OFFICIAL REPORTS.